

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLD TRADE CENTER
DISASTER SITE LITIGATION

21 MC 100 (AKH)

THIS DOCUMENT RELATES TO ALL
CASES

**CERTIFICATION OF WENDELL Y. TONG IN SUPPORT OF MOTION FOR
AN ORDER COMPELLING CERTAIN MEDICAL PROVIDERS TO RESPOND
TO SUBPOENAS DUCES TECUM**

Wendell Y. Tong, an attorney duly admitted to practice law in the State of New York, being duly sworn, deposes and says as follows:

1. I am associated with the law firm of Sullivan Papain Block McGrath & Cannavo P.C., co-liaison counsel for the Plaintiffs herein, and as such am fully familiar with the facts and circumstances of the within action.

2. This certification is submitted in support of the instant motion, which seeks an order to compel certain medical providers to produce records pursuant to Plaintiffs' subpoenas. The sought medical documents are essential to proving Plaintiffs' eligibility for an award in the Settlement Process Agreement ("SPA").

3. Notwithstanding the subpoenas, the below- described medical doctors have neither produced the requested documents in any form, nor have they claimed any privilege. As the opt-in deadline for the Master Settlement Agreement approaches, Plaintiffs seek relief.

4. Other medical providers have responded to Plaintiffs' subpoenas and produced medical records for hundreds of Plaintiffs.

5. If these medical records are not produced, Plaintiffs will suffer irreparable harm in that they will be left unable to prove their eligibility for an award under the SPA.

6. Jurisdiction and venue are proper under the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 408(b)(3), which grants this Court exclusive jurisdiction over actions brought on claims relating to or arising out of the events of September 11, 2001, and pursuant to the World Trade Center Settlement Process Agreement. *See In re World Trade Center Disaster Site*, 414 F.3d 352, 375 (2d Cir. 2005) (“[I]t is clear from the additional provision in § 408 that the federal district court in the Southern District “shall have ... *exclusive* jurisdiction over *all* actions brought for *any* claim ... resulting from or relating to the terrorist-related aircraft crashes of September 11, 2001,” *id.* § 408(b)(3).”).

7. Similar to United States District Judge Fallon's exercise of multidistrict jurisdiction in ordering the release of medical records pertaining to the Vioxx Settlement Program, this Court likewise has the authority to compel medical providers to produce the plaintiffs' medical records pursuant to subpoenas. *See Exhibit 66*, a true and correct copy of Judge Fallon's Pretrial Order No. 35, *In re Vioxx Products Liability Litigation*, Civ. No. 2:05-MD-01657 (E.D. La. April 10, 2008).

8. On July 27, 2010, plaintiffs subpoenaed New York Methodist Hospital for production of medical records pertaining to Plaintiff William T. Smith. Attached as **Exhibit 1** are true and correct copies of the subpoena and the affidavit of personal service.

9. On July 27, 2010, plaintiffs subpoenaed Orange Radiology Associates, MRI of Orange for production of medical records pertaining to Plaintiff Daniel Shortell. Attached as **Exhibit 2** are true and correct copies of the subpoena and the affidavit of personal service.

10. On July 27, 2010, plaintiffs subpoenaed Dr. Segal, Horizon Family Medical Group, Goshen GI for production of medical records pertaining to Plaintiff Daniel Shortell. Attached as **Exhibit 3** are true and correct copies of the subpoena and the affidavit of personal service.

11. On August 9, 2010, plaintiffs subpoenaed Laurelton Heart Specialists for production of medical records pertaining to Plaintiff Anthony Amoroso. Attached as **Exhibit 4** are true and correct copies of the subpoena and the affidavit of personal service.

12. On August 9, 2010, plaintiffs subpoenaed Next Generation Radiology for production of medical records pertaining to Plaintiff Louis Angelone. Attached as **Exhibit 5** are true and correct copies of the subpoena and the affidavit of personal service.

13. On August 9, 2010, plaintiffs subpoenaed NYU Clinical Cancer Center for production of medical records pertaining to Plaintiff Patrick Battle. Attached as **Exhibit 6** are true and correct copies of the subpoena and the affidavit of personal service.

14. On August 9, 2010, plaintiffs subpoenaed NYU Pulmonary & Critical Care Associates/Langone Medical Center (Tisch Hospital) for production of medical records pertaining to Plaintiff Philip S. Benigno. Attached as **Exhibit 7** are true and correct copies of the subpoena and the affidavit of personal service.

15. On August 9, 2010, plaintiffs subpoenaed Jamaica Hospital for production of medical records pertaining to Plaintiff William Biggin, James Mager and Dewandranath Samaroo. Attached as **Exhibit 8** are true and correct copies of the subpoena and the affidavit of personal service.

16. On August 9, 2010, plaintiffs subpoenaed Deepak Vadhan, M.D. for production of medical records pertaining to Plaintiff Dennis Brantley. Attached as **Exhibit 9** are true and correct copies of the subpoena and the affidavit of personal service.

17. On August 9, 2010, plaintiffs subpoenaed Sleep Center for Medicine for production of medical records pertaining to Plaintiff David Bruno. Attached as **Exhibit 10** are true and correct copies of the subpoena and the affidavit of personal service.

18. On August 9, 2010, plaintiffs subpoenaed Drucker, Genuth & Augstein, MDs PC for production of medical records pertaining to Plaintiff Frank Chara. Attached as **Exhibit 11** are true and correct copies of the subpoena and the affidavit of personal service.

19. On August 9, 2010, plaintiffs subpoenaed Blue Sleep for production of medical records pertaining to Plaintiffs Patrick Conroy, Keith DeCaro, James Gormley, Adrian Keenan, Kevin McEnery and Richard Olsen. Attached as **Exhibit 12** are true and correct copies of the subpoena and the affidavit of personal service.

20. On August 9, 2010, plaintiffs subpoenaed Staten Island Heart Associates for production of medical records pertaining to Plaintiff Walter Clark. Attached as **Exhibit 13** are true and correct copies of the subpoena and the affidavit of personal service.

21. On August 9, 2010, plaintiffs subpoenaed David Steiger, M.D. for production of medical records pertaining to Plaintiff Harry Coyle. Attached as **Exhibit 14** are true and correct copies of the subpoena and the affidavit of personal service.

22. On August 9, 2010, plaintiffs subpoenaed North Shore Hematology Oncology Associates for production of medical records pertaining to Plaintiff Anthony D'Amore. Attached as **Exhibit 15** are true and correct copies of the subpoena and the affidavit of personal service.

23. On August 9, 2010, plaintiffs subpoenaed Pulmonary Associates – Dr. Eugenio Guzman and Dr. Anthony Smith for production of medical records pertaining to Plaintiff Eileen DiVietri. Attached as **Exhibit 16** are true and correct copies of the subpoena and the affidavit of personal service.

24. On August 9, 2010, plaintiffs subpoenaed Brooklyn Hospital Center for production of medical records pertaining to Plaintiff Richard Draves. Attached as **Exhibit 17** are true and correct copies of the subpoena and the affidavit of personal service.

25. On August 9, 2010, plaintiffs subpoenaed Rafael de la Hoz, M.D. for production of medical records pertaining to Plaintiff Robert Essex. Attached as **Exhibit 18** are true and correct copies of the subpoena and the affidavit of personal service.

26. On August 9, 2010, plaintiffs subpoenaed University Place Orthopedics for production of medical records pertaining to Plaintiff Rocco Fertoli. Attached as **Exhibit 19** are true and correct copies of the subpoena and the affidavit of personal service.

27. On August 9, 2010, plaintiffs subpoenaed Dr. Zev Brandel, M.D. for production of medical records pertaining to Plaintiff John Gleeson. Attached as **Exhibit 20** are true and correct copies of the subpoena and the affidavit of personal service.

28. On August 9, 2010, plaintiffs subpoenaed New York Eye & Ear Infirmary for production of medical records pertaining to Plaintiff Michael Greene. Attached as **Exhibit 21** are true and correct copies of the subpoena and the affidavit of personal service.

29. On August 9, 2010, plaintiffs subpoenaed Deborah Cosgrave, N.P. for production of medical records pertaining to Plaintiff James Hosford. Attached as **Exhibit 22** are true and correct copies of the subpoena and the affidavit of personal service.

30. On August 9, 2010, plaintiffs subpoenaed Margarita Polanco-Szillus, M.D. for production of medical records pertaining to Plaintiff Richard Jones. Attached as **Exhibit 23** are true and correct copies of the subpoena and the affidavit of personal service.

31. On August 9, 2010, plaintiffs subpoenaed North Shore Pulmonary Associates for production of medical records pertaining to Plaintiff James Kadnar. Attached as **Exhibit 24** are true and correct copies of the subpoena and the affidavit of personal service.

32. On August 9, 2010, plaintiffs subpoenaed Montefiore Medical Center for production of medical records pertaining to Plaintiff Christopher King. Attached as **Exhibit 25** are true and correct copies of the subpoena and the affidavit of personal service.

33. On August 9, 2010, plaintiffs subpoenaed NY Gastroenterology Associates/Dr. Cullen for production of medical records pertaining to Plaintiff Neal King. Attached as **Exhibit 26** are true and correct copies of the subpoena and the affidavit of personal service.

34. On August 9, 2010, plaintiffs subpoenaed Gwen W. Skloot, M.D. (Pulmonary Associates) for production of medical records pertaining to Plaintiff Francis Lavery. Attached as **Exhibit 27** are true and correct copies of the subpoena and the affidavit of personal service.

35. On August 9, 2010, plaintiffs subpoenaed Beth Corn, M.D./Mount Sinai School of Medicine for production of medical records pertaining to Plaintiff Francis Lavery.

Attached as **Exhibit 28** are true and correct copies of the subpoena and the affidavit of personal service.

36. On August 9, 2010, plaintiffs subpoenaed Ari Klapholz, M.D. for production of medical records pertaining to Plaintiff Phillip Mazzella. Attached as **Exhibit 29** are true and correct copies of the subpoena and the affidavit of personal service.

37. On August 9, 2010, plaintiffs subpoenaed Ekong B. Ekong, M.D. for production of medical records pertaining to Plaintiff Eugene Meehan. Attached as **Exhibit 30** are true and correct copies of the subpoena and the affidavit of personal service.

38. On August 9, 2010, plaintiffs subpoenaed Bart Peloro, M.D. for production of medical records pertaining to Plaintiff Thomas Mitchell. Attached as **Exhibit 31** are true and correct copies of the subpoena and the affidavit of personal service.

39. On August 9, 2010, plaintiffs subpoenaed Sarah Stackpole, M.D. for production of medical records pertaining to Plaintiff Richard Paulan. Attached as **Exhibit 32** are true and correct copies of the subpoena and the affidavit of personal service.

40. On August 9, 2010, plaintiffs subpoenaed Lenox Hill Hospital for production of medical records pertaining to Plaintiffs Raymond Philips and Sean Kelly. Attached as **Exhibit 33** are true and correct copies of the subpoena and the affidavit of personal service.

41. On August 9, 2010, plaintiffs subpoenaed Lawrence M. Sher, M.D. for production of medical records pertaining to Plaintiff Arthur Poore. Attached as **Exhibit 34** are true and correct copies of the subpoena and the affidavit of personal service.

42. On August 9, 2010, plaintiffs subpoenaed Stony Brook University Hospital for production of medical records pertaining to Plaintiffs John Poulos and Herbert Walker.

Attached as **Exhibit 35** are true and correct copies of the subpoena and the affidavit of personal service.

43. On August 9, 2010, plaintiffs subpoenaed David Cohen, M.D. for production of medical records pertaining to Plaintiff Antonio Rodriguez. Attached as **Exhibit 36** are true and correct copies of the subpoena and the affidavit of personal service.

44. On August 9, 2010, plaintiffs subpoenaed Healthworks (Robin DaCosta, M.D. and Michael Ryder, M.D.) for production of medical records pertaining to Plaintiff John Schulken. Attached as **Exhibit 37** are true and correct copies of the subpoenas and the affidavit of personal service.

45. On August 9, 2010, plaintiffs subpoenaed Joseph Dryer, M.D. for production of medical records pertaining to Plaintiff Robert Shenefield. Attached as **Exhibit 38** are true and correct copies of the subpoena and the affidavit of personal service.

46. On August 9, 2010, plaintiffs subpoenaed Dr. Natalie Cher for production of medical records pertaining to Plaintiff William Steinbuch, III. Attached as **Exhibit 39** are true and correct copies of the subpoena and the affidavit of personal service.

47. On August 9, 2010, plaintiffs subpoenaed Dr. Ralph Messo for production of medical records pertaining to Plaintiff Patrick Sullivan. Attached as **Exhibit 40** are true and correct copies of the subpoena and the affidavit of personal service.

48. On August 9, 2010, plaintiffs subpoenaed Stony Brook University Medical Center-Sleep Disorder Center for production of medical records pertaining to Plaintiff Michael Suwalski. Attached as **Exhibit 41** are true and correct copies of the subpoena and the affidavit of personal service.

49. On August 10, 2010, plaintiffs subpoenaed Stony Brook University Health Sciences Center, Department of Medicine for production of medical records pertaining to Plaintiff Allen Akers. Attached as **Exhibit 42** are true and correct copies of the subpoena and the affidavit of personal service.

50. On August 10, 2010, plaintiffs subpoenaed Allergy & Asthma Family Care for production of medical records pertaining to Plaintiff John Belford. Attached as **Exhibit 43** are true and correct copies of the subpoena and the affidavit of personal service.

51. On August 10, 2010, plaintiffs subpoenaed Winthrop University Hospital for production of medical records pertaining to Plaintiffs Robert Broome, James Lang and Charles Piotrowski. Attached as **Exhibit 44** are true and correct copies of the subpoena and the affidavit of personal service.

52. On August 10, 2010, plaintiffs subpoenaed ENT & Allergy Associates for production of medical records pertaining to Plaintiff Patrick J. Colgan. Attached as **Exhibit 45** are true and correct copies of the subpoena and the affidavit of personal service.

53. On August 10, 2010, plaintiffs subpoenaed Nyack Hospital for production of medical records pertaining to Plaintiff John Durkin. Attached as **Exhibit 46** are true and correct copies of the subpoena and the affidavit of personal service.

54. On August 10, 2010, plaintiffs subpoenaed Publix Super Markets for production of medical records pertaining to Plaintiff Garret Lindgren. Attached as **Exhibit 47** are true and correct copies of the subpoena and the affidavit of personal service.

55. On August 10, 2010, plaintiffs subpoenaed St. Luke's-Roosevelt Hospital for production of medical records pertaining to Plaintiff Daniel Maher. Attached as **Exhibit 48** are true and correct copies of the subpoena and the affidavit of personal service.

56. On August 10, 2010, plaintiffs subpoenaed Dr. Michael Creta for production of medical records pertaining to Plaintiff David Planken. Attached as **Exhibit 49** are true and correct copies of the subpoena and the affidavit of personal service.

57. On August 10, 2010, plaintiffs subpoenaed Sleep Services of America – Westchester Medical Center for production of medical records pertaining to Plaintiff Frank Quigley. Attached as **Exhibit 50** are true and correct copies of the subpoena and the affidavit of personal service.

58. On August 10, 2010, plaintiffs subpoenaed Hospital for Special Surgery for production of medical records pertaining to Plaintiff Patrick Ryan. Attached as **Exhibit 51** are true and correct copies of the subpoena and the affidavit of personal service.

59. On August 10, 2010, plaintiffs subpoenaed Dr. Paul S. Richman/Stony Brook University Health Sciences Center, Department of Medicine for production of medical records pertaining to Plaintiff John Schulken. Attached as **Exhibit 52** are true and correct copies of the subpoena and the affidavit of personal service.

60. On August 11, 2010, plaintiffs subpoenaed Rite Aid Corporation for production of medical records pertaining to Plaintiffs Neil Ambrosio and Pete Chiodo. Attached as **Exhibit 53** are true and correct copies of the subpoena and the affidavit of personal service.

61. On August 11, 2010, plaintiffs subpoenaed Walgreens Corporation for production of medical records pertaining to Plaintiffs Carmelo Composto and Kenneth Stromstedt. Attached as **Exhibit 54** are true and correct copies of the subpoena and the affidavit of personal service.

62. On August 11, 2010, plaintiffs subpoenaed Maha Lewis-Serag, M.D. for production of medical records pertaining to Plaintiff Manuel Gonzalez. Attached as **Exhibit 55** are true and correct copies of the subpoena and the affidavit of personal service.

63. On August 11, 2010, plaintiffs subpoenaed CVS Corporation for production of medical records pertaining to Plaintiffs James Harris and Gary Slattery. Attached as **Exhibit 56** are true and correct copies of the subpoena and the affidavit of personal service.

64. On August 11, 2010, plaintiffs subpoenaed Neurology and Stroke Associates for production of medical records pertaining to Plaintiff Larry Lynch. Attached as **Exhibit 57** are true and correct copies of the subpoena and the affidavit of personal service.

65. On August 12, 2010, plaintiffs subpoenaed Hospital for Joint Diseases for production of medical records pertaining to Plaintiff Edward Curtis. Attached as **Exhibit 58** are true and correct copies of the subpoena and the affidavit of personal service.

66. On August 12, 2010, plaintiffs subpoenaed Pathmark Pharmacy for production of medical records pertaining to Plaintiff John Orosz. Attached as **Exhibit 59** are true and correct copies of the subpoena and the affidavit of personal service.

67. On August 12, 2010, plaintiffs subpoenaed Dr. Thomas Joyce for production of medical records pertaining to Plaintiff Vincent Spinelli. Attached as **Exhibit 60** are true and correct copies of the subpoena and the affidavit of personal service.

68. On August 12, 2010, plaintiffs subpoenaed Camille Napier, M.D. for production of medical records pertaining to Plaintiff Patrick Sullivan. Attached as **Exhibit 61** are true and correct copies of the subpoena and the affidavit of personal service.

69. On August 19, 2010, plaintiffs subpoenaed Iron Mountain for production of medical records pertaining to Plaintiff Joseph McKay. Attached as **Exhibit 62** are true and

correct copies of the subpoena and the affidavit of personal service.

70. On September 23, 2010, plaintiffs subpoenaed St. Vincent's Hospital for production of medical records pertaining to Plaintiff Daniel McCluskey. Attached as **Exhibit 63** are true and correct copies of the subpoena and the affidavit of personal service.

71. On October 1, 2010, plaintiffs subpoenaed Indu Shivaram, M.D. for production of medical records pertaining to Plaintiff Peter Quintalino. Attached as **Exhibit 64** are true and correct copies of the subpoena and the affidavit of personal service.

72. Prior to August 21, 2010, plaintiffs subpoenaed Wal-Mart Corporation for production of medical records pertaining to Plaintiffs Carl Gelardi, Scott Holowach, Carl Punzone and Louis Sarapochillo. Attached as **Exhibit 65** are true and correct copies of the subpoena and cancelled check indicating Wal-Mart was served with the subpoena.

73. Accordingly, it is respectfully requested that this Court issue an order compelling the above-referenced medical providers to comply with the outstanding subpoenas at once.

74. I declare under penalty of perjury that the foregoing is true and correct.

WHEREFORE, it is requested that the within motion be granted in all respects.

Dated: New York, New York
October 18, 2010

Respectfully submitted,

SULLIVAN PAPAIN BLOCK
MCGRATH & CANNAVO P.C.

By: 

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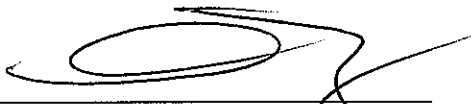
STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

WENDELL Y. TONG, being duly sworn, deposes and says:

I am associated with the law firm of SULLIVAN PAPAIN BLOCK MCGRATH & CANNAVO P.C., attorneys for the Plaintiffs herein.

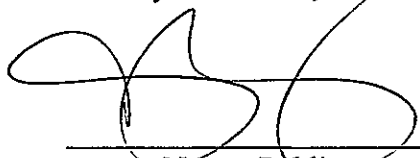
I have read the foregoing Certification and know the contents thereof, and upon information and belief deponent believes the matters alleged therein to be true.

The source of deponent's information and the grounds of his beliefs are communications, papers, reports, and investigations contained in the file.



WENDELL Y. TONG (WT 0717)

Sworn to before me this
18th day of October, 2010.



Notary Public

DENISE STRACUZZA
Commissioner Of Deeds, City Of New York
No. 4-6970
Cert. Filed in New York County
Commission Expires 3/11/2011